

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

BRITTNEY MCDOUGLE, INDIVIDUALLY, ET AL.

PLAINTIFF

VS.

CIVIL ACTION NO. 3:15-cv-350-CWR-FKB

NESHOBA COUNTY, MISSISSIPPI, ET AL.

DEFENDANTS

**NESHOBA COUNTY DEFENDANTS' MOTION TO EXCLUDE
CERTAIN TESTIMONY OF PLAINTIFFS' EXPERT ROGER MITCHELL**

COME NOW Defendants Neshoba County, Mississippi, Sheriff Tommy Waddell, in his official capacity, and Jailers Amanda Monk, Evelyn McBeath, Harvey Hickman, Burton O'Berry, Jamie Hutchinson, and Joey Curry, in their individual and official capacities ("Neshoba County Defendants"), by and through counsel, and file this their Motion to Exclude Certain Testimony of Plaintiffs' Expert Roger Mitchell, as follows:

1. Plaintiffs filed this civil action asserting federal claims brought pursuant to 42 U.S.C. § 1983 and state law claims pursuant to the Mississippi Tort Claims Act, MISS. CODE ANN. § 11-46-1, *et seq.*, arising out of the death of Michael D. McDougale, Sr. ("McDougale") at the Neshoba County Jail several hours after his arrest by the Philadelphia Police Department for breaking and entering, disorderly conduct, and resisting arrest.

2. On July 7, 2016, Plaintiffs designated Roger Mitchell, a forensic pathologist with RAM Consulting, to give testimony in this case regarding McDougale's cause of death. *See* Plaintiff's Notice of Service, Doc. [97]; Mitchell Report, Exh. "A." Specifically, Mitchell intends to testify that McDougale died due to blunt force injury to the head with subdural hemorrhage, as well as methamphetamine and amphetamine toxicity. *See* Exh. "A." Mitchell further intends to testify that the manner of McDougale's death was "homicide." *Id.*

3. As set forth in these Defendants' separate Memorandum of Authorities, Mitchell's opinion that the manner of death was "homicide" fails to meet the rigors of *Daubert* and Rule 702 of the Federal Rules of Civil Procedure because it is based on factual assumptions that have no evidentiary basis whatsoever. It also constitutes an improper legal conclusion. Mitchell's opinion as to the manner of death is, therefore, unreliable, irrelevant, and should be excluded.

4. In support of their Motion to Exclude Mitchell's proposed testimony as to the manner of death, these Defendant rely on their separate Memorandum of Authorities and the following exhibits attached hereto:

"A" Expert Report of Roger Mitchell

"B" Billy Seales Deposition (Excerpts)

"C" David Spivey Deposition (Excerpts)

"D" Scott Cunningham Affidavit

WHEREFORE, PREMISES CONSIDERED, Defendants Neshoba County, Tommy Waddell, Amanda Monk, Evelyn McBeath, Harvey Hickmon, Burton O'Berry, Jamie Hutchinson, and Joe Curry respectfully request the Court to grant their Motion to Exclude Certain Testimony of Plaintiffs' Expert Roger Mitchell. These Defendants further request any additional relief the Court deems proper.

Respectfully submitted, this the 21st day of October, 2016.

SHERIFF TOMMY WADDELL, AMANDA
MONK, EVELYN MCBEATH, HARVEY
HICKMAN, BURTON O'BERRY, JAMIE
HUTCHINSON, JOEY CURRY, AND NESHOPA
COUNTY, MISSISSIPPI

BY: /s/ Steven J. Griffin
OF COUNSEL

ROY A. SMITH, JR. - BAR # 7599
rsmith@danielcoker.com
STEVEN J. GRIFFIN - BAR # 103218
sgriffin@danielcoker.com
DANIEL, COKER, HORTON & BELL, P.A.
4400 OLD CANTON ROAD, SUITE 400
POST OFFICE BOX 1084
JACKSON, MISSISSIPPI 39215-1084
TELEPHONE: (601) 969-7607
FACSIMILE: (601) 969-1116

CERTIFICATE OF SERVICE

I, Steven J. Griffin, of counsel for the Neshoba County Defendants do hereby certify that I have filed the foregoing with the Clerk using the ECF system, which sent notification of such filing to the following:

Carlos Moore, Esq.
carlos@carlosmoorelaw.com

Attorney for Plaintiff

John D. Price, Esq.
jdp@wisecarter.com

Jason D. Childress, Esq.
jdc@wisecarter.com

Attorneys for City of Philadelphia, Chief Grant Myers, Brad Crockett, Eric Lyons, and Brandon Pope

THIS, the 21st day of October, 2016.

/s/ Steven J. Griffin